

**BILLY J. WILLIAMS, OSB #901366**

United States Attorney

District of Oregon

**KEVIN DANIELSON, OSB #06586**

Assistant United States Attorney

kevin.c.danielson@usdoj.gov

1000 SW Third Avenue, Suite 600

Portland, Oregon 97204-2902

Telephone: (503) 727-1000

Facsimile: (503) 727-1117

Attorneys for Defendants

**UNITED STATES DISTRICT COURT**

**DISTRICT OF OREGON**

**AMERICAN CIVIL LIBERTIES  
UNION,**

**Case No. 3:18-cv-00247-JR**

**Plaintiff,**

**DECLARATION OF TONI FUENTES  
IN SUPPORT OF JOINT STATUS  
REPORT**

**v.**

**U.S. DEPARTMENT OF HOMELAND  
SECURITY; and U.S.  
IMMIGRATION AND CUSTOMS  
ENFORCEMENT,**

**Defendants.**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON AT PORTLAND**

AMERICAN CIVIL LIBERTIES UNION OF  
OREGON,

Plaintiff,

v.

U.S. IMMIGRATION AND CUSTOMS  
ENFORCEMENT.

Defendants.

Civil Action No. 18-cv-00247 (RDM)

**DECLARATION OF ICE DEPUTY FOIA OFFICER TONI FUENTES REGARDING  
ICE FOIA OFFICE WORKLOAD AND RESOURCES**

**I. INTRODUCTION**

I, Toni Fuentes, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am the Deputy Officer of the U.S. Immigration and Customs Enforcement (“ICE”) Freedom of Information Act (“FOIA”) Office. I have held this position since September 30, 2018 and am one of the ICE official immediately responsible for supervising ICE responses to requests for records under the Freedom of Information Act, 5 U.S.C. § 552 (the FOIA), the Privacy Act, 5 U.S.C. § 552a (the Privacy Act), and other applicable records access statutes and regulations. Prior to this position, I have held numerous FOIA positions over the past 20 years to include: FOIA Director for the National Protection and Programs Directorate (“NPPD”) at the U.S. Department of Homeland Security (“DHS”); Government Information Specialist for Department of Justice, U.S. Marshal's Service, Office of General Counsel; Government Information Specialist for the Department of Defense, Office of the Inspector General's FOIA Office; FOIA Officer, Paralegal Specialist for Department of the

Navy, NAVAIR/NAWCAD's Office of Counsel; Management and Program Analyst for Department of Homeland Security, Customs and Border Protection's FOIA Office; and FOIA Paralegal Specialist for the National Aeronautics and Space Administration's Office of Chief Counsel.

2. My official duties and responsibilities include the general management, oversight, and supervision of both the Intake Unit and the Litigation Processing Unit of the ICE FOIA Office. I manage and supervise a staff of ICE FOIA Paralegal Specialists, who report to me regarding initial intake of FOIA and Privacy Act requests received by ICE, as well as the status, processing, and productions of ICE's federal FOIA litigations. In connection with my official duties, I am familiar with ICE's procedures for responding to requests for information pursuant to provisions of FOIA and the Privacy Act.

3. I make this declaration in my official capacity based on my personal knowledge, my review of records kept by ICE in the ordinary course of business, and information provided to me by other ICE employees in the course of my official duties.

4. This declaration is submitted in tandem with the November 21, 2018 Joint Status Report in the above-named case to provide specific processing statistics, information concerning the ICE FOIA Office staffing, and FOIA request trends that have impacted the ICE FOIA Office workload.

## **II. CURRENT STATISTICS REGARDING FOIAS SUBMITTED TO ICE**

5. The ICE FOIA Office is currently processing approximately 15,071 requests, of which 4,018 are original requests submitted to the ICE FOIA Office, 61 are consults, and

11,000 requests are a referral backlog from U.S. Citizenship and Immigration Services (“USCIS”) from fiscal year<sup>1</sup> (“FY”) 2018.

6. This past fiscal year, the ICE FOIA Office has experienced a substantial and dramatic increase in the number of FOIA requests received by ICE compared to previous years. In FY 2015, ICE FOIA received 44,748 FOIA requests, and had a backlog of approximately 841 FOIA requests carried over into FY 2016. In FY 2016, ICE FOIA received 63,385 FOIA requests, and had a backlog of approximately 621 FOIA requests carried over into FY 2017. In FY 2017, ICE FOIA received 47,839 FOIA requests, and had a backlog of approximately 535 FOIA requests carried over into FY 2018. In FY 2018, ICE FOIA received 91,218 FOIA requests, and carried a backlog of approximately 11,000 requests in FY 2019 (which began on October 1, 2018).

7. In short, between FY 2017 and FY 2018 the ICE FOIA Office experienced approximately a 91% increase in FOIA requests. This dramatic increase in ICE FOIA’s workload is attributed to the aforementioned increase in the number of referrals ICE receives from USCIS, and the seemingly increased public interest in the Department’s operations pertaining to the recent Presidential Orders and subsequent guidance from the Secretary.

8. In addition to the increasing volume of FOIA requests, ICE has also experienced an increase in the complexity of FOIA requests. These FOIA requests take considerably longer to process, due to the extensive search that is usually required and the intricacies of the documents or data that are produced. In FY 2017, one FOIA requester alone, a data clearing

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<sup>1</sup> The fiscal year starts on October 1 and ends on September 30.

house - filed more than 270 FOIA requests seeking extensive data extracts. As of January 31, 2018, ICE FOIA had 144 similar FOIA requests from the same requester in FY 2018.

9. All these factors have nearly doubled the ICE FOIA Office's overall workload in comparison with the same date for FY 2017. In response to the increasingly heavy workload, the ICE FOIA Office has adopted the court-sanctioned practice of generally handling backlogged requests on a "first-in, first-out basis."

10. The ICE FOIA Office tracks all of the requests it receives, both directly and by referral, through FOIAXpress, which is ICE FOIA's case management system. If needed, before importing documents to FOIAXpress, the ICE FOIA Office will use a separate program called Relativity to initially process documents for productions. This eDiscovery software allows ICE FOIA to remove duplicate documents and group email threads, reducing overall page counts and thus facilitating faster and more efficient document production. Relativity can also facilitate narrowed searches within document sets, which is a function that FOIAXpress lacks. However, FOIAXpress and Relativity are not interoperable systems, and documents cannot be readily transferred or shared between the systems.

### **III. ICE FOIA OFFICE'S STAFF LEVELS AND WORKLOAD**

11. A consequence of the increasing complexity and volume of ICE FOIA's workload (see paragraph 3) is that more of the FOIA requests are subject to litigation in U.S. District Court.

12. The ICE FOIA Litigation Processing Unit is currently comprised of three full-time experienced paralegals and one part-time paralegal who are processing 87 active FOIA litigations. There are currently 27 FOIA litigation cases that have rolling productions, which

yield a monthly litigation production page count of between 15,000-17,000 pages.

Additionally, there are an additional five cases with rolling productions that will be added to the case list starting this month. These additional five cases are expected to contribute a combined total of an additional 8,789 pages per month to the overall monthly litigation production. With that addition, the four paralegals will be required to process nearly 25,000 pages per month. These page count numbers do not take into account the more than 50 other FOIA litigation matters that involve a single production (instead of a rolling production schedule).

13. The ICE FOIA Litigation Processing Unit also drafts, assigns, and tracks any and all searches for responsive documents in response to FOIA litigations. These search taskings can span dozens of ICE program and field offices and require the Unit to keep track of hundreds of thousands of responsive documents, as well as the office's search documentation.

14. The three full-time paralegals and one part-time paralegal who comprise the ICE FOIA Litigation Processing Unit also have other duties, in addition to processing documents pursuant to litigation. For example, these four individuals also prepare reports, redact Prison Rape Elimination Act ("PREA") reports, process Congressional inquiries, redact Office of Detention Oversight ("ODO") reports, send out FOIA (b)(4) submitter notices on relevant cases, and handle consults and referrals from other agencies as they come in. The Unit also supports attorneys in the ICE Office of the Principal Legal Advisor on federal FOIA litigations, assisting in the creation of *Vaughn* indexes, declarations, and other necessary filings.

15. The members of the ICE FOIA Litigation Processing Unit also manage a host of other administrative duties, including, but not limited to, monitoring the ICE FOIA inbox,

scheduling productions, preparing clearance emails, and preparing other correspondence to requesters.

16. In addition, due to the loss of eight ICE FOIA employees due to budget cuts, members of the ICE FOIA Litigation Processing Unit are also increasingly required to assist other units within ICE FOIA with the processing of incoming FOIA requests, additional congressional inquiries, and other projects at any given time.

17. In total, each Litigation Processing Unit team member can process on average 100-300 pages per day, depending on the complexity of the documents, while still being able to fulfill their other essential job requirements.

18. Outside of the Litigation Processing Unit, the ICE FOIA Office currently has a staff of 27 FOIA specialists dedicated to processing FOIA requests solely at the administrative level. The processors are responsible for responding to the original FOIA requests and, if necessary, reprocessing remands on appeal. In FY 2018, these FOIA processors completed and closed out 66,699 FOIA requests. Unfortunately, at this time, ICE FOIA does not have authority to hire any additional FOIA processor employees; indeed, as mentioned above, ICE FOIA employees have been lost due to budget cuts.

19. Additionally, during FY 2018 (which comprised the time period that the ICE FOIA Office received the Plaintiff's October 10, 2017 FOIA request), the ICE FOIA Office did not have dedicated ICE FOIA staff who performed intake duties of FOIA requests submitted to ICE. Rather, the ICE FOIA Office detailed three individuals for periods of 90-120 days at a time from other ICE program offices to perform intake duties. As of September 30, 2018, the ICE FOIA Office has hired and trained two new individuals who are dedicated

intake specialists and are appropriately trained to properly assess when expedited processing requests may be granted.

20. In order to meet its obligations for all cases in litigation and ensure that all of the FOIA matters progress so that each requester can receive a response, the ICE FOIA Office typically cannot process more than 500 pages per month for each case. Any increase in one matter would hinder ICE FOIA's ability to process records for productions in other matters.

**IV. JURAT CLAUSE**

I declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge and belief. Signed this 21st day of November 2018.

A handwritten signature in black ink, appearing to read 'Toni Fuentes', with a long horizontal line extending to the right.

Toni Fuentes, Deputy FOIA Officer  
Freedom of Information Act Office  
U.S. Department of Homeland Security  
U.S. Immigration and Customs Enforcement  
500 12<sup>th</sup> Street, S.W., Stop 5009  
Washington, D.C. 20536-5009